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REMARKS

Claims 1 to 31 are pending in this application, of which claims 1 and 19 are independent. Claim 32 has been canceled. Favorable reconsideration is requested in view of the following remarks.

Claims 1-4, 10, 11, 14-16, 19, 20, 23, 25-27, and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nichols (U.S. 6,608,816) in view of Berthaud et al. (U.S. 6,011,776).

Claim 1, as amended, recites a method for processing communication in a device having a first interface and a second interface, the method including "controlling a rate of arrival of packets at the first interface, the controlling being performed in the device."

In the previous reply, the applicant argued "Nichols does not disclose or suggest that the device control a rate of arrival of packets." (page 7). The claim requires "processing communication in a device ... comprising ... controlling a rate of arrival of packets at the first interface." In the Office Action, the examiner does not appear to contend that the rate at which packets arrive at the Nichols' device is controlled though processing that takes place in the Nichols' device itself. The Office Action does not address the "in a device" limitation and instead provides references that control the rate of arrival of packets at Nichols' device through processing wholly outside Nichols' device.

Both Nichols and Berthaud are directed at techniques for controlling the rate at which packets that are launched into a network. In Nichols, the device receives packets from a source, determines whether each packet is to be given a preferred level of service, queues the packets based on the determination, and controls when the packets are to be transmitted to the network. (col. 1, lines 50-64).

In Berthaud, the device receives packets from a source, uses a leaky bucket module to designate packets to have one of at least two different priority classes, and launches the packets into the network. (col. 11, lines 40-48). By designating the priority class of the packets prior to launching the packets into the network, the leaky bucket module is able to shape the traffic before it enters the network: "Green packets are guaranteed a pre-specified grade of service

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based on an acceptable level of delay and loss probability within the network. Red packets do not have the same guarantees and are discarded before the green packets when congestion occurs." (col. 11, lines 48-53).

The applicant has amended claim 1 to more clearly articulate the "in a device" requirement already present in the claim. Specifically, the "controlling" is "performed in the device."

It appears from the Office Action that the examiner corresponds the Nichols device (130) with the device recited in claim 1. (§2, lines 3-5). The Office Action acknowledges that Nichols "fail to disclose controlling a rate of arrival of packets at the first interface" (§2, line 14) and relies on the Berthaud device to provide the function of controlling the rate of packets that arrive at the Nichols device. That is, the Berthaud device and the Nichols device are combined in a cascade (or a series) arrangement. However, such a combination of the references fails to disclose the method of claim 1, which requires "controlling a rate of arrival of packets at the first interface, the controlling being performed in the device." In other words, the rate at which packets arrive at the first interface of the device is controlled by the device itself, not by a separate device such as the Berthaud device, which in the proposed combination would be separate from the Nichols device. For at least this reason, the applicant submits that claim 1 is patentable.

Claims 2-4, 10, 11, and 14-16 depend on claim 1 and are patentable for at least the same reasons set forth above with respect to claim 1.

Claim 19 recites a communication device including "a rate shaper for controlling a rate of arrival of packets at the first network interface according to the configurable policy."

The Office Action does not specifically address which elements of Berthaud or Nichols the examiner corresponds with features of claim 19. In one instance, the applicant assumes, for the sake of argument only, that the examiner corresponds the Nichols device (130) with the "communication device" recited in claim 19. However, as previously-discussed, arranging the Berthaud device in series with the Nichols device (i.e., where the Berthaud device is external to the Nichols device) does not result in a communication device that itself includes a rate shaper as

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recited in claim 19. In another instance, the applicant assumes, for the sake of argument only, that the examiner corresponds the combination device formed by the Berthaud device and the Nichols device (i.e., the Berthaud device and the Nichols device are internal components of a single device) as the "communication device" recited in claim 19. Even so, the Berthaud device controls the rate of arrival of packets at an internal interface between the Berthaud device and the Nichols device, whereas the rate shaper of claim 19 controls the "rate of arrival of packets at the first network interface" of the communication device. For at least these reasons, the applicant submits that claim 19 is patentable.

If the examiner is combining the Nichols device and the Berthaud device in a different manner, the applicant respectfully requests that the examiner clearly set forth which elements of claim 19 the examiner finds in each reference and the way in which the examiner is combining the references to disclose the communication device of claim 19.

Claims 20, 23, 25-27, and 31 depend on claim 19 and are patentable for at least the same reasons set forth above with respect to claim 19.

Claims 5-9, 21, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nichols in view of Berthaud et al. as applied to claims 1 and 19 above, and further in view of Epstein et al. (U.S. 6,684,329). The Epstein reference adds no teachings or suggestion to Nichols and Berthaud to render claims 1 and 19 obvious and therefore claims 5-9, 21, and 22 are patentable for at least the same reasons as claims 1 or 19 from which they depend.

Claims 5 and 28-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nichols in view of Berthaud, and further in view of Dillon et al. (U.S. 6,658,463). The Dillon reference adds no teachings or suggestion to Nichols and Berthaud to render claim 1 obvious and therefore claims 5 and 28-30 are patentable for at least the same reasons as claim 1 from which they depend.

Claims 12 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nichols in view of Berthaud as applied to claims 1 and 19 above, and further in view of Kloth (U.S. 6,598,034). The Kloth reference adds no teachings or suggestion to Nichols and Berthaud

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to render claim 1 obvious and therefore claims 12 and 13 are patentable for at least the same reasons as claim 1 from which they depend.

Claims 17, 18, and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nichols in view of Berthaud as applied to claims 1 and 19 above, and further in view of Frey (U.S. 4,245,343). The Frey reference adds no teachings or suggestion to Nichols and Berthaud to render claims 1 and 19 obvious and therefore claims 17, 18 and 24 are patentable for at least the same reasons as claims 1 or 19 from which they depend.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,



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4/11/05

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